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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BELIVEAU, SCOTT E

ART UNIT PAPER NUMBER

2623

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/039,436</p>	<p>Applicant(s) BIRMINGHAM, BLAIR B.A.</p>	
	<p>Examiner Scott Beliveau</p>	<p>Art Unit 2623</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Scott Beliveau
Primary Examiner
Art Unit: 2623

Continuation of 11. does NOT place the application in condition for allowance because: because applicant's arguments having been fully considered are not deemed persuasive.

Applicants argue that the claims 42-54 and 56 are directed to statutory matter since the office action does not provide any support for the assertion that a claim reciting a signal encoded with functional descriptive material does not fall within any of the categories of patentable subject matter. Applicants are respectfully referred Annex 4 - Section C - Electromagnetic signals of the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (1300 Off. Gaz. Pat. Office 142 (Nov. 22, 2005) (Patent Subject Matter Eligibility Interim Guidelines)) for the basis of the examiner's assertion. Regarding applicants arguments that one skilled in the art would not understand the term "computer readable medium" to be directed to an electromagnetic signal, applicants argument appears to be that a signal might be used to carry computer readable information but the signal itself is not a computer readable medium. However, given the explicit disclosure that the computer readable instruction are conveyed as a transmitted signal, the scope of the 'computer readable medium' includes the non-statutory signal with its encoded instructions. While it is recognized that the transmitted signal could be stored, the claim does not explicitly capture or limits itself to the particular embodiment of a physical storage medium.

In regards to applicant's arguments against the rejection of claims 16-21 and 27 that the Begeja fails to teach "providing content . . . to the remote device based on a set of user-specific parameters", the examiner respectfully disagrees. The claim requires that the content is provided based on the set of user-specific parameters. It does not specify any particular 'way' or format that the content be provided, nor does it limit the scope of 'user-specific parameters'. Begeja provides video clips matching user-specific parameters or search terms. Accordingly, applicant's arguments that Begeja fails to disclose each and every element is not persuasive.

Regarding the argument that the combination of Begeja et al. and Boies et al. fail to teach each and every element, the examiner respectfully disagrees. Begeja et al. explicitly teaches that it is known to provide content in a variety of forms including a still image (Para. [0090]). Boies et al. teaches that content should be provided content using the best format suitable to a user (i.e. use a particular format for a particular user - 'user-specific parameters'). The teachings of Boies et al. are therefore non-limiting with respect to the usage of any particular known format. The examiner equated the disclosed graphical information (Para. [0036]) of Boies et al. as meeting the limitation of a 'still image' as understood in the art. Accordingly, applicant's arguments are not persuasive.

Regarding applicant's arguments against the combination of Begeja and Traction, applicant's argue that the element of "identifying a first portion of the stored video content . . . based on a bandwidth capability of a remote device", is not taught by the combination of references. Begeja et al. teaches identifying content based on a bandwidth capability (Para. [0049] and [0090]). It simply does not state on what device the bandwidth capability is based on (client or server). Traction is not limited to simply translating content based upon network parameters as argued. Rather, Traction teaches that it is known to provide a particular format of content based upon the bandwidth capability by identifying a portion of video content (i.e. video, text, audio) and subsequently redirecting the remote device or client to that particular pre-scaled portion of the video content depending on the network speed or bandwidth of the remote device (Col 7, Lines 43-46). Accordingly, applicant's arguments regarding the missing limitations are not persuasive.

SEB